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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,940	01/17/2001	Brian Thornton	BT5302	6173
71555	7590	11/08/2007		
SPEED LAW FIRM 111 CENTER STREET SUITE 1200 LITTLE ROCK, AR 72201			EXAMINER GANNEY, STEVEN J	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 11/08/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/761,940

Applicant(s)

THORNTON, BRIAN

Examiner

Steven J. Ganey

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3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-18 and 21-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18 and 21-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/9/07.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on August 6, 2007, which has been fully considered in this action.

#### *Terminal Disclaimer*

2. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

#### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 16, 21, 30 and 32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 21 and 34 of copending Application No. 11/319,114. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both claim a dispenser having a tee connector having a lower chamber, a cylinder forming an upper chamber, an upstream opening, a downstream opening, and first and second electrically powered valves. The claims of the instant invention are broader in scope than claims 21 and 34 of copending Application No. 11/319,114 and are encompassed in claims 21 and 34.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26, there is an inconsistency between the language in the preamble, which recites an apparatus, and body of the claims, which also positively recites "disposed within an irrigation system". This makes the scope of the claim unclear since it appears to be reciting the subcombination of the apparatus, however, the limitation concerning the combination with the irrigation system is also positively recited. Applicant is required to clarify whether claim is

drawn to the subcombination or the combination and to amend the claim to be consistent with the intent. As to treating the claim on the merits, the examiner is considering the claim to be drawn to the subcombination of the apparatus. If applicant considers the claim to be directed to the subcombination then language such as --wherein the apparatus is adapted to be disposed within an irrigation system-- should be used.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 16-18 and 21-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence in view of Buchan et al and Pickens et al or Fredericks.

Lawrence discloses a dispenser comprising a tee connector 104; a cylinder 102/122 with a side surface having a plurality of openings 162; an upstream opening and downstream opening, see figure 1; and wherein the lower portion of the lower chamber is unobstructed over its entire length, except for the lower chamber having a bottom surface with a plurality of openings and a first electrically powered valve operably connected to the upstream opening and a second electrically powered valve operably connected to the downstream opening. Buchan et al discloses an apparatus comprising a dispenser having a tee connector 18 and cylinder 14 and a first valve 88 connected to the upstream opening and a second valve 96 connected to the downstream opening, and teaching the use of a solenoid valve(i.e. electrically powered valve) to

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control a valve, see col. 11, lines 20 and 21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide electrically powered valves for the upstream and downstream openings of Lawrence, as taught by Buchan et al, since such a modification would facilitate maintenance on the dispenser by enabling the valves to both be shut of and remove the dispenser for cleaning or replacement of parts or for loading up tablets.

Pickens et al discloses a dispenser comprising a cylinder 40 with a bottom surface having a plurality of openings 47 and a side surface with as plurality of openings 49. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of openings in the bottom surface of the lower portion in the cylinder of Lawrence, as taught by Pickens et al, since with such a modification the mixing of the tablets with the water is facilitated and the concentration of the tablets mixing with the water can be controlled by changing the number, size and shape of the openings in the side and bottom surfaces.

Fredericks discloses a dispenser comprising a cylinder 20 connected to a fitting 38 with an upper chamber having a lower portion 32 with a bottom surface having a plurality of openings 34 and a plurality of openings 50 or 54 in the side surface, see figures 3-5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of openings in the bottom surface of the lower portion in the cylinder of Lawrence, as taught by Fredericks, since with such a modification the water entry into the cylinder is facilitated for mixing.

As to claims 17, 18 and 36, the connection means for the first and second valves to the tee connector, whether it is a reducer bushing or other coupling means is a matter of design choice depending on the size of the pipe and the tee connector.

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As to claim 23, note Figure 3 of Fredericks.

As to claims 26, 27, 33 and 37, with respect to applicant's statements of intended use, i.e. "disposed within an irrigation system", "operably connected to one or more sprinkler heads", "operably connected to at least a portion of an irrigation system" and "capable of replacing a master valve of an irrigation system", the device of Lawrence, is capable of performing applicant's intended use. Note Lawrence discloses in col. 3, lines 19 and 22 and 23, that the dispenser can be used in any system involving tablets or any tablet system and in col. 6, lines 66 and 67, where it can be used in any apparatus using stack of tablets for treating either fresh or waste water.

As to claims 29 and 34, the tee connector and cylinder are shown formed as a single piece, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cylinder rigidly connected to the upper opening of the tee connector by gluing, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

9. Claims 21, 26, 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over King, Sr. '174 in view of Buchan et al.

King, Sr. '174 discloses a dispenser comprising a tee connector 50; a cylinder 51/52 with a side surface having a plurality of openings; an upstream opening and downstream opening, see figure 3; and wherein the lower portion of the lower chamber is unobstructed over its entire length, except for a first electrically powered valve operably connected to the upstream opening and a second electrically powered valve operably connected to the downstream opening. Buchan

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et al discloses an apparatus comprising a dispenser having a tee connector 18 and cylinder 14 and a first valve 88 connected to the upstream opening and a second valve 96 connected to the downstream opening, and teaching the use of a solenoid valve(i.e. electrically powered valve) to control a valve, see col. 11, lines 20 and 21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide electrically powered valves for the upstream and downstream openings of King, Sr. '174, as taught by Buchan et al, since such a modification would facilitate maintenance on the dispenser by enabling the valves to both be shut of and remove the dispenser for cleaning or replacement of parts or for loading up tablets.

As to claim 26 and 27, with respect to applicant's statements of intended use, i.e. "disposed within an irrigation system" and "operably connected to one or more sprinkler heads", the device of King, Sr. '174, is capable of performing applicant's intended use.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 16-18 and 21-37 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Womack discloses operably connecting a RPZ valve with an electrically controlled valve. McGrew, Jr., Horvath et al and Hoadley disclose dispensers with lower portions of the lower chamber being unobstructed over substantially their entire length.



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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 7:00-5:00; M, Tu, W and Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjg  
10/29/07

  
STEVEN J. GANEY  
PRIMARY EXAMINER

10/29/07